

## **Commission on Health and Safety and Workers' Compensation**

### **MINUTES OF MEETING**

**July 6, 2006**

**Elihu M. Harris State Building  
Oakland, California**

#### In Attendance

Chair Angie Wei

Commissioners Allen Davenport, Alfonso Salazar, Kristen Schwenkmeyer, Darrel "Shorty" Thacker and John Wilson

Executive Officer Christine Baker

#### Not in Attendance

Commissioners Leonard C. McLeod and Robert B. Steinberg

#### **Call to Order**

Chair Angie Wei, 2006 Chair of the Commission, called the meeting to order at 10:15 a.m. She stated that there would be time for public comment and that those wanting to make comments should sign the sign-up sheet on the side table.

#### *CHSWC Vote*

Commissioner Wilson moved to approve the Minutes of the April 6, 2006 meeting, and Commissioner Davenport seconded. The motion passed unanimously.

#### **State Disability Insurance (SDI) Study Update – Proposal for Further Analysis**

**Frank Neuhauser, UC Berkeley Survey Research Center**

Frank Neuhauser stated that California is one of five jurisdictions that have the equivalent of a workers' compensation system for non-occupational injuries. State Disability Insurance (SDI) is a universal, non-occupational disability system for people in the labor force. Mr. Neuhauser explained that he would provide background on SDI and where it overlaps with the workers' compensation system. He would discuss the data, adjustments to the data of the two systems to make them comparable, and the results and implications of his research.

#### *Background*

Mr. Neuhauser stated that workers' compensation programs exist in all states and are paid for by employers. Workers' compensation costs on average are 2 percent to 6 percent of payroll, depending on the state. Workers' compensation includes medical and temporary disability and permanent disability. California gives temporary disability up to 730 days or up to two years.

California is one of five states with a near universal non-occupational disability insurance system, SDI, that is paid for by employees through payroll deductions. The California rate is

**Commission on Health and Safety and Workers' Compensation**  
**MINUTES OF MEETING**  
**July 6, 2006 Elihu M. Harris State Building Oakland, California**

1.1 percent of payroll, with a maximum contribution or cap. This rate has increased six times in the past decade or so. Therefore, there has been a rapid increase in the cost of SDI, at least in terms of what employees pay. SDI covers disability up to 365 days. After 365 days, you either move into a more permanent disability system, like Social Security Disability Insurance (SSDI), or you are off disability. There are no medical or long-term disability benefits connected with SSDI, and it is paid for by employees.

Mr. Neuhauser then stated that there are key policy concerns for state policymakers and the Commissioners. Workers' compensation is an effort to internalize occupational injury costs to give employers the proper incentive for investments in prevention. In the same way, SDI internalizes the costs of non-occupational injuries, signaling to employees the appropriate level of benefits, which they would want to set for such a program. Proper employee costs for SDI signal appropriate benefit breadth and level. Recently, the SDI program has been extended substantially to "Family Leave" benefits. Mr. Neuhauser stated that California is the only state in the country that has such a benefit, and it pays up to six weeks of benefits to people who need leave either to take care of a spouse or a child, or to take leave related to adoption or the birth of a child. In addition, men can take leave as well as women. Mr. Neuhauser stated that this was an important benefit change in the system.

Mr. Neuhauser noted that there is frequent litigation over whether the system should be paying for hard-to-define injuries. Litigation causes a friction cost, which is a non-efficient way to resolve problems. He then stated that if these systems could be more successfully integrated and reduce litigation, both systems would benefit.

Mr. Neuhauser stated that there has been no research done on how these systems overlap, especially since so few states have SDI, especially in the U.S. Robert Reville at RAND and some of his colleagues have examined the overlap between group health and workers' compensation benefits, but that the current CHSWC study is the only study, at least in the U.S., that examines claiming across occupational and non-occupational disability systems simultaneously. Mr. Neuhauser also stated that the study provides the only research on SDI in any state, and it is the only research comparing two, separate short-term to medium-term disability systems.

### *Methodology*

Mr. Neuhauser explained that a 20 percent sample had been obtained of all claimants in the SDI system from the "Single Client File" (SCF) for 1991 to 2002, which is about 1.5 million claims for this period. He noted that one of the problems with the data is that many employers can opt out of SDI; they still have to supply it, but they can opt out or self-insure. Mr. Neuhauser stated that the study needed to define only those workers who were eligible to claim in the SDI system in order to do the analysis.

A special "employer file" with constructed data that defined all workers who were eligible for SDI benefits by number of unique social security numbers (SSNs) was requested from the Employment Development Department (EDD). Workers were defined by two-digit SIC

**Commission on Health and Safety and Workers' Compensation**  
**MINUTES OF MEETING**  
**July 6, 2006 Elihu M. Harris State Building Oakland, California**

(industry) codes, such as construction or retail, and by contribution and wage. From this data, denominators for injury and illness and total rates by two-digit industry were constructed. 3Several injury ICD-9 codes, especially the most common, which are pregnancy for women, were excluded. Each claim was defined as injury or illness based on ICD-9 codes.

The EDD data was compared with Bureau of Labor Statistics (BLS) data for California industries. The Survey of Occupational Injuries and Illnesses (SOII) for 2000 to 2002 gives data on incidents of workplace disabilities for 2000 and 2002. Data are reported by number of illnesses or injury incidences per 100 full-time equivalent employees (FTEs) and by two-digit industry codes. This is different from data from SDI which give incidences relative to unique SSNs per year.

Mr. Neuhauser stated that another important factor is that not all workers and industries are alike, and some of these workers may have disability characteristics that lead them to be disabled more often. Age, gender, race, and ethnicity are characteristics that commonly affect the probability of having a disabling injury or illness. Women typically have more disability than men at younger ages, whereas men have more disability than women in older ages. Race and age play a very important role, and ethnicity is a factor. Mr. Neuhauser stated that they used a basic Monthly File to translate unique SSNs into FTEs. This allowed the characteristics of workers that might affect probability of disability, such as age, gender, race, and ethnicity, etc., to be identified.

Mr. Neuhauser stated that a specific distribution could be identified, rather than an expected clustering around an average. Non-occupational injuries are predicted by the existence of occupational injuries. More specifically, the prevalence of claims in the SDI system for any industry is highly correlated with the prevalence of claims for occupational injuries. Mr. Neuhauser stated that this suggests that occupational injuries are being reported as non-occupational. The opposite conclusion, that is, that non-occupational injuries are being shifted to the workers' compensation system, would have been a plausible finding for the study, since a finding of injuries and illnesses at work is a fairly low standard. Mr. Neuhauser stated that illnesses are a little more difficult to chart due to the way they are reported by the BLS. Occupational illnesses are far less frequent than injuries. The relation between industry and non-occupational illness reporting is actually stronger, suggesting again that there is some shifting of occupational illnesses to the non-occupational reporting system.

Mr. Neuhauser stated that when injuries and illnesses are combined, the relationship remains strong. From a statistical point of view, this correlation should be zero if they accurately sort occupational injuries into the occupational system and non-occupational injuries into the non-occupational system. He stated that it was the same for illnesses and for both injuries and illnesses. In fact, the correlation of 0.3 for the data is fairly strong for this kind of data.

Mr. Neuhauser pointed out that one thing to note about these two systems is that they have very different illness and injury distributions. Occupational systems are dominated by injuries, about 3.5 per 100 FTEs in California. There are only about 0.2 reported occupational illnesses each year in California. It is the opposite in the SDI system, which is dominated by illnesses; less

**Commission on Health and Safety and Workers' Compensation**  
**MINUTES OF MEETING**  
**July 6, 2006 Elihu M. Harris State Building Oakland, California**

than one injury is reported per 100 workers, but almost 3.5 to 4 illnesses are reported. Mr. Neuhauser stated that for every 100 injuries reported in the occupational system or workers' compensation system, about 6 injuries are being reported in the SDI system that might more properly be reported in the workers' compensation system. Mr. Neuhauser stated that the data suggests that for every 100 illnesses reported as occupational, about 20 are being shifted to the SDI system. These are medical conditions that are hard to define as occupational and non-occupational, yet the full effect is that for every 100 illnesses or injuries, about 20 are shifted to the SDI system.

Mr. Neuhauser stated that about 22 percent of injuries, 16 percent of illnesses, and 20 percent of a combination of both that are SDI claims would probably be more appropriately reported as occupational claims. For 20 percent of claims, there is an important occupational component of what is reported as SDI.

*Implications*

Mr. Neuhauser stated that implications of these findings are that there would be a substantial subsidizing of employer-supported workers' compensation by employee-financed SDI. Approximately 20-25 percent of injuries/illnesses may be misclassified as non-occupational. He stated that integration could save substantial administrative costs. If it were more appropriately designed and if the discrimination of what is occupational and what is not occupational were better, employers might pick up larger percentage of the combined program of the two systems with costs offset by administrative savings.

*Further Study*

Mr. Neuhauser stated that it is important to be cautious about the data for several reasons. First, the data are supposed to reflect the cases that were reported after litigation as occupational and non-occupational. These are from the client files, and they are supposed to be corrected if the case is settled and found to be occupational. If a worker files a case and the insurer at least temporarily denies the case or disputes the case, the worker often goes to the SDI system for temporary disability (TD) coverage. Once the case is defined as occupational or non-occupational, especially if it is ultimately accepted by the insurer or determined by the court to be occupational, then the SDI system is repaid by the insurer or the self-insured employer, and that cost is shifted to the workers' compensation system. However, Mr. Neuhauser claimed, it is not clear that that is being accurately captured by the SDI system and the workers' compensation system. The data are not well linked, so it is important to match what is seen in the SDI and workers' compensation systems to be sure that there is accurate defining of how the legal issues have turned out and how they should have been reported. These same results would be found if they did not correct for the ultimate disposition of the case. Mr. Neuhauser stated that the data can be checked for accurately reflecting final disposition of disputed cases by matching SDI with the Workers' Compensation Appeals Board (WCAB) data. These data need to be checked to see if they accurately reflect longer-term overlap between SDI and workers' compensation.

**Commission on Health and Safety and Workers' Compensation**  
**MINUTES OF MEETING**  
**July 6, 2006 Elihu M. Harris State Building Oakland, California**

Mr. Neuhauser then stated that there have been recent changes in benefit and premium levels through Senate Bill (SB) 899. Short-term and long-term trends may make the period of 2000 to 2002 not completely predictive of the long-term differences between the two systems. During this period, BLS and SDI were reporting substantial declines in the number of workplace injuries. SDI was also reporting substantial increases in non-occupational disability assistance. Mr. Neuhauser stated this is consistent with the data, but it may reflect a short-term effect, rather than a long-term one. He stated that if one looks at a longer-term trend, where there are changes in the amount of exposure that employers report and changes in the premium level, it is evident that when premiums go up, employers tend to report substantially lower payroll. This may be an under-reporting of payroll generated by increases in premium, which may mean that for a period where there were very high premiums, as was the case recently, there was an under-reporting of injuries. He cautioned that the tendency of substantial shifting between the two systems may not be characteristic of the longer term.

Mr. Neuhauser noted that there are several questions to consider, including: have recent changes in workers' compensation benefit levels increased the pressure on SDI, making it less attractive to claim on the workers' compensation system? have very high workers' compensation premiums increased pressure on SDI and will this abate with recent decline? when benefit levels differ, does reporting shift between two systems? and can research be extended to a broader range of social-welfare programs and social-insurance programs (e.g., MediCal, SSDI or SSI), as these systems are affected by workplace injuries, just as SDI is affected?

Mr. Neuhauser explained that future work on these issues could include: extending SDI data through 2005; extending EDD employment data for the full period, 1993 to 2005; linking EDD and WCAB data; and linking the Workers' Compensation Information System (WCIS) and other data systems. Mr. Neuhauser stated that WCIS has not yet been used for the kind of research done by CHSWC. If a linkage worked, this could become a standard for California and an example for other states.

Mr. Neuhauser stated that the data show a potential large overlap between the SDI and workers' compensation systems, paid for by employers and the non-occupational system paid for by workers. This should be examined in more detail because the impacts for employers and employees are fairly large. Therefore, a key recommendation is that CHSWC should extend the linkages between data from the two systems.

*Questions*

Commissioner Davenport asked how long it would take to make the database linkages. Mr. Neuhauser replied that it would be fairly simple because the complicated part has already been requested of EDD, and SDI also has already done the complicated part. Future costs will not be expensive because SDI has already done the original programming for the 2000 to 2002 data. He stated that the most complicated and challenging part is to see whether WCIS can be used for something in a policy arena, rather than just for data collection and as a database. Mr. Neuhauser stated that at some point it will be necessary to test WCIS for research as required by this study and he thought that the State had invested a lot of resources and time and enough money in WCIS to try to push that effort forward.

**Commission on Health and Safety and Workers' Compensation**  
**MINUTES OF MEETING**  
**July 6, 2006 Elihu M. Harris State Building Oakland, California**

Commissioner Davenport stated that it was his understanding that EDD is capable and willing to do this work for the right price. He also asked Mr. Neuhauser if he thought that CHSWC had the cooperation of the Division of Workers' Compensation (DWC) to try out WCIS. Mr. Neuhauser said that he thought so and that he thought DWC is interested in the issues related to using WCIS for policy reasons and in improving the quality of WCIS by challenging it with analysis. He stated that the other linkages with the Workers' Compensation Appeals Board (WCAB) and SDI are very straight-forward. There are some confidentiality concerns, but he stated that he thought that the linkage with WCIS would be straightforward.

Commissioner Wilson asked if the family leave population had been removed from the database along with the pregnancy population. Mr. Neuhauser replied that it was. Family leave is in a separate database and is outside CHSWC's area. However, Mr. Neuhauser said that someone from the UCLA equivalent of the Berkeley Institute of Industrial Relations was in the audience, and that Ruth Milkman was doing extensive work on the family leave program.

Commissioner Wilson then asked if it is still true that the employee fills out the application for the SDI claim, and that the questions about how the injury occurred are still on the application. Mr. Neuhauser replied that the worker fills out an application and the doctor fills out one. Commissioner Wilson then asked what happens if someone reviews the form and has a question. Mr. Neuhauser indicated that he did not know, but that it was important to follow up on that answer.

Jason Schmelzer from the California Manufacturers and Technology Association stated that a lien is filed after the application is filed. Commissioner Wilson said that that was his understanding from the past, and that the claims and liens were filed rapidly. Mr. Neuhauser said that it is important that the final disposition of the case is accurately reflected in the data, and that questions about whether a lien is filed and if it is attached to a case are key questions that need answers, including whether EDD has something to attach it to. Mr. Schmelzer stated that SDI will sometimes file a claim. Commissioner Wilson then stated that injuries were pretty straightforward, but that illnesses are trickier. He asked for confirmation that some illnesses were recently required by law to meet a higher bar of qualification for workers' compensation. Mr. Neuhauser replied that many changes will apply. Commissioner Wilson asked if the liens were credited and if you could determine payments on liens. Mr. Neuhauser said that these data were supposed to reflect the "worker's bank for future claims." So, if a worker exhausts his "bank," he cannot file a claim. On an occupational claim, a worker could not take a leave for pregnancy, for example, and have it paid.

Commissioner Salazar asked for names of the states with SDI. Mr. Neuhauser responded that some states were New York and New Jersey and possibly Rhode Island, Massachusetts, Hawaii, and Puerto Rico or Guam. Commissioner Salazar asked if any other states were doing research on this. Mr. Neuhauser replied that California was the only state in the U.S. doing such research. Mr. Neuhauser stated that in Europe, where universal disability programs are more common, there is some work on disability, though that work is more limited than one would expect.

**Commission on Health and Safety and Workers' Compensation**  
**MINUTES OF MEETING**  
**July 6, 2006 Elihu M. Harris State Building Oakland, California**

Commissioner Wilson asked about the percentage of voluntary plans. Mr. Neuhauser replied that self-insureds represented about 30 percent of employment. Commissioner Wilson asked if State employees were in this, and Mr. Neuhauser replied that the State was a separate system. Commissioner Davenport commented that State employees are now eligible and added that he thought voluntary plans were a small market share. Commissioner Wilson stated that he had worked for a number of employers that had a voluntary plan. Mr. Neuhauser said that he would include a breakdown of the different plans in the final report.

Commissioner Davenport stated that an important issue is cost overlap and that there were two ways that overlaps occur. One way is that disability claims are made for injuries that should have been claimed in the other system; the other way is the lien issue. The problem is not about establishing liens; it is about collecting them and about whether you are there when claims get settled. He asked if Mr. Neuhauser would look at both of those approaches and at how they are going to affect each other. Mr. Neuhauser responded that ultimately, it will be good to know what was collected by EDD or by the employee system. EDD files a lien on a claim and sometimes the case is determined to be Compromise and Release (C&R) without a resolution about whether it is compensable or not. That does not resolve the case, and it does not allow EDD to collect. At that point, there is no final resolution. EDD negotiates a discount on the recovery, such as 70 cents on the dollar, and it is not clear how that is defined. Mr. Neuhauser stated that that might be counted as less than a full claim in order to look at the issue of cross-subsidization.

Commissioner Davenport stated that he thought the cause of the injury should be the focus of the study, because it is a black hole on the issue of liens. Mr. Neuhauser stated that the data were quite detailed on the nature of the injury for industries. If the database existed for illnesses, on the other hand, such problems with asbestos and benzene for example, would have turned up earlier in industries like ship building and that illnesses that were not typically recognized as occupational would come to light.

Chair Angie Wei stated that she thought it would be helpful to have baseline statistics on the SDI program, e.g., average duration of SDI. Mr. Neuhauser stated that he had requested some analysis from the California Workers' Compensation Institute (CWCI) on duration of disability by ICD-9 injury diagnosis codes. Interestingly, almost all the durations by disability were almost identical in both systems. That partly relates to how long disability lasts in the workers' compensation system where it is tightly controlled. The SDI system has very little oversight, with no claims adjustor or emphasis on getting back to work. Both systems are truncated at one year. Chair Wei also stated that she saw problems in the future with two-year time limits for disability benefits. She asked whether people go on SDI while waiting for a workers' compensation claim to go through. She also stated that it would be important to understand if people are avoiding filing a workers' compensation claim for whatever reason, in favor of SDI. SDI appears to be a healthy fund now, but as more pressure builds on the fund, cutting benefits or increasing worker taxes will become necessary, neither of which is desirable. She stated that she was not certain that injuries and illnesses by industry were necessary to understand the interactions between the two systems, in terms of the policy decisions that will be coming up; instead, it is important to understand the choices that the worker is making about what system to

**Commission on Health and Safety and Workers' Compensation**  
**MINUTES OF MEETING**  
**July 6, 2006 Elihu M. Harris State Building Oakland, California**

go into it. Mr. Neuhauser replied that he agreed and that the use of industry was a statistical way to identify the answer. He stated that what is important is the way workers are being shifted between systems, and the characteristics that are being correctly or incorrectly reported.

Chair Wei stated that this was a preliminary study and that Mr. Neuhauser had submitted a proposal for further analysis. Commissioner Wilson asked if CHSWC staff recommended the proposal and if money is available for the further analysis. Ms. Baker replied that CHSWC staff recommended the proposal and there was money for further analysis.

*CHSWC Vote*

Commissioner Davenport moved to approve the proposal for further study, and Commissioner Salazar seconded. The motion passed unanimously.

**A Report on the Pharmacy Study**  
**Frank Neuhauser, UCB**

Mr. Neuhauser explained that he would summarize information on the Pharmacy Study presented at the April 6<sup>th</sup> CHSWC meeting. Additional analysis has been done based on comments at that meeting and more focus was spent on paid amounts in the system. He also stated that what is being paid is different from the discount allowed. The study looked at the fee schedules as a floor and a ceiling for workers' compensation, absent some upfront negotiation or contract over a discount. For physician-dispensed drugs, there is some discount from what could be charged based on the fee schedules or what could be paid. Mr. Neuhauser said that they wanted to take that into account. He also stated that since the last meeting, the Workers' Compensation Insurance Rating Bureau (WCIRB) came out with new estimates for 2005 paid data, which showed somewhat lower total pharmaceutical costs than what might have been anticipated. He stated that this was good though it probably does not reflect the fee schedules as much as it does changes in the American College of Occupational and Environmental Medicine (ACOEM) guidelines or other utilization controls, because the pricing process did not change very much. Paid amounts affect the costs somewhat. There are also proposed regulations being sent to the Office of Administrative Law. He stated that pharmacies are typically controlled by the Medi-Cal fee schedule. For the generic drugs, the Medi-Cal fee schedule is the pricing control with the Federal Upper Limit or the Maximum Allowable Ingredient Cost. These tend to be quite low. The most common drug dispensed is Ranitidine, a generic form of Zantac. Pharmacies are paid 18 cents per tablet in ingredient costs. The Pharmacy Average Wholesale Price (AWP) is about \$1.26. The AWP as the controlling benchmark for physician-dispensed drugs is \$2.36. The AWP for physicians is much higher and is also a benchmark for the pricing and reimbursement of physicians.

Chair Wei asked what Zantac cures. Mr. Neuhauser replied that it was for acid indigestion. She then asked whether the drugs were available over the counter, and Mr. Neuhauser replied that they were available over the counter and by prescription, with the difference being higher milligrams in one pill by prescription. The final price was almost \$3.00. The physicians were reimbursed \$3.00, and the pharmacy was reimbursed 18 cents, a vast difference. Mr. Neuhauser



**Commission on Health and Safety and Workers' Compensation**  
**MINUTES OF MEETING**  
**July 6, 2006 Elihu M. Harris State Building Oakland, California**

explained that physician dispensers are getting reimbursed using AWP as a benchmark; he stated that it is a terrible benchmark, except perhaps for single-source non-generic drugs, such as Ambien or Vioxx or Celebrex. If one takes the whole distribution of paid amounts by pharmacies, based on the new estimates by the WCIRB (plus some built-in inflation between 2005 and 2006), the estimate is that pharmacy costs for the whole workers' compensation system would be about \$649 million for 2006 (paid amount by insurers and self-insured employers), of which a little over 50 percent would go to physicians dispensing repackaged drugs. Of the \$649 million, \$330 million was reimbursed to physicians for dispensing the drugs. If those same drugs were dispensed through a pharmacy and reimbursed at their costs, they would cost about \$67 million, or about 1/5 of what the physicians get. The excess cost is therefore estimated to be about \$283 million to employers and insurers in 2006. Mr. Neuhauser stated that insurers care about the impact of workers' compensation costs on their premiums. For this, Mr. Neuhauser estimated the cost of these drugs over the lifetime of a claim in 2006. He said if no one changed the reimbursement schedule for physician-dispensed drugs, the estimate would be about \$615 million, of which \$1,225,000 would be charged as premium to cover drugs for policies incepting in 2006. This is the cost to insurers of having physician-dispensed drugs. An excess of \$490 million would be spent in policy-year 2006 by not dispensing drugs at a pharmacy.

Mr. Neuhauser concluded by stating that about half of pharmaceutical reimbursements are going to physicians for physician-prescribed and physician-dispensed drugs. Physicians are paid on average about 4 times what pharmacies are paid for the same drug. That is about \$263 million in excess to physicians for dispensing, and about \$490 in excess premium costs for insured employers.

Mr. Neuhauser stated that according to the new regulations proposed by the DWC, if Medi-Cal lists the drugs, doctors would get what Medi-Cal would reimburse. If Medi-Cal does not list the drug because it is a repackaged version of another drug listed, then the doctor is reimbursed the amount payable for the listed drug. If the drug does not exist at all on the Medi-Cal formulary, then the lowest price alternative, such as a generic, is used, and the AWP less 17 percent determines the price. Mr. Neuhauser stated that this is a reasonable response, taking into consideration what the Commission has been studying. However, he stated that it would be useful to take a few additional days for working with the data to examine how this proposed regulation would work. If he worked with the California Workers' Compensation Institute (CWCI), he could do this in about a day and then report back to CHSWC.

Mr. Neuhauser stated that additional work on the evaluation of incentives on which drugs physicians actually dispense would be useful. In the report submitted to CHSWC, there is a discussion of the literature on physician responses to incentives to prescribe and dispense, or when physicians refer to diagnostic test centers or laboratories where they have a financial interest. He stated that the data would be useful for the medical community, especially Medicare, with respect to the issue of the appropriateness of physician-dispensed drugs. The data could be analyzed perhaps with funding by the Agency for Healthcare Research and perhaps with CHSWC as a partner in interest. He stated that national funding agencies would

**Commission on Health and Safety and Workers' Compensation**  
**MINUTES OF MEETING**  
**July 6, 2006 Elihu M. Harris State Building Oakland, California**

find it useful to see this kind of data to identify ways in which physicians respond and how that affects the ir dispensing.

Destie Overpeck, Chief Counsel, DWC, stated that the proposed regulations attached to Mr. Neuhauser's report are those posted on the public forum area of the DWC website. Ms. Overpeck stated that minor technical changes were made since then and that the DWC expects final regulations ready for the Office of Administrative Law by August. At that time, the formal rulemaking process will begin with 45-day notice and public comment period. Mr. Neuhauser asked Ms. Overpeck if the DWC had looked at specific drug pricing, and she replied that the DWC had not. Chair Wei asked for clarification on the type of changes made by the DWC. Ms. Overpeck confirmed that the changes were strictly technical and that nothing changes in terms of the fee schedule.

Commissioner Wilson stated that he hoped that CHSWC staff would release the report for review by the public and evaluate the proposed regulation to see if that would adequately solve the problem. Chair Wei stated that she appreciated the research and its thoroughness. She asked Christine Baker when it could be finalized. Ms. Baker stated that it could be completed after public comment and finalized at the next CHSWC meeting. Chair Wei asked if the final report would include analysis of the impact of the regulation. Chair Wei stated that these steps would be helpful to inform the regulatory process and public-comment period. Mr. Neuhauser replied that he will work with CWCI to see if the two data sets can be linked and if there is sufficient data.

*CHSWC Vote*

Commissioner Wilson moved to approve the release of the report for review by the public and ask the staff to evaluate the proposed regulation, and Commissioner Davenport seconded. The motion passed unanimously.

**Update on the Permanent Disability Study**

**Frank Neuhauser, Survey Research Center, UC Berkeley**

Mr. Neuhauser explained that the results of this study are virtually the same as the past report to CHSWC. He stated that this study has been ongoing with CHSWC to monitor the impact of the new permanent disability schedule adopted as of January 1, 2005, about 18 months ago, which based the disability schedule on the AMA guides, adjusted for the future earnings wage loss (FEC). Mr. Neuhauser explained that the question CHSWC has posed is whether this is effective and how it has affected permanent disability ratings and the related benefits for workers.

*Methodology*

Mr. Neuhauser stated that the data source is from the Disability Evaluation Unit (DEU). About 10,000 ratings are done per month. The data set now includes ratings through March 31, 2006. Data are extracted by the DEU and sent over to UC Berkeley for analysis. Ratings under the

**Commission on Health and Safety and Workers' Compensation**  
**MINUTES OF MEETING**  
**July 6, 2006 Elihu M. Harris State Building Oakland, California**

new schedule have been matched with ratings that would have been similar under the old schedule, from time of injury to date of the rating, the type of impairment being rated, whether it is a multiple disability, and whether it is a summary or consult rating. Ratings are built under the old schedule done between 2000 and 2004, which are as similar as possible to ratings done under the new schedule. The average ratings are then compared between the two systems. Mr. Neuhauser explained that cases rated zero are not included. These claims are not well tracked in the DEU system. Many claims that would have been rated zero may not get to the DEU now, he stated, so that with this methodology, one can note an estimate of what claims may have been rated under the old system.

Mr. Neuhauser stated that as of March 31, 2006, about 15 months after introduction of the new schedule, there are about 10,400 medical evaluations that can be compared with the old schedule. About half are summary ratings or unrepresented workers. He stated that these are representative of the claims that would have been submitted to DEU prior to the schedule change. He also stated that these are considered neutral claims done by randomly assigned raters. About half are consultative ratings, with qualified medical evaluators (QMEs) under the new format or physicians selected by the parties, under the old format. These are not quite as comparable as summary ratings.

Mr. Neuhauser stated that for summary ratings, the average 2005 new schedule rating was 11.4 percent, and those same claims under the pre-2005 schedule would have received a rating around 19.8 percent. He stated that this difference is a 43 percent reduction in ratings. Mr. Neuhauser stated that he included figures for the last time with a sample set 2/3 as large, and explained that there was little or no change. For consults, the ratings are similar but changing a little bit more. He said that these are always going to be increasing as time goes on. The ratings are coming in around 43 percent lower. Indemnity awards show the same pattern. There is a 50 to 55 percent reduction in what workers received, whether summary or consult ratings. These numbers have remained constant over the past three months, even the past nine months.

Mr. Neuhauser stated that there is a little more change when individual body parts are compared. The lower extremities have a bigger decrease than the upper extremities. Psychiatric ratings are receiving somewhat higher compensation. Apportionment causation for permanent disability remained constant; about 11 percent of summary ratings are getting some form of apportionment assigned to them. On average, about 40 to 42 percent of apportionment is being attributed to non-industrial causes. Mr. Neuhauser explained that ongoing research will continue to update these data. He stated that the number of ratings has decreased recently and one possible explanation is that the percentage of cases getting rated zero or not making it to the DEU at all is underestimated because they do not receive any permanent disability rating under the new AMA guide. This is a difficult issue to look at, he stated, because it involves trying to figure out what is not being seen.

Chair Wei asked if some of the zeros might be found in the SDI filing. Mr. Neuhauser replied that this was a big concern because benefits are being so restricted in the workers' compensation system that claiming in the workers' compensation system is no longer attractive. He stated that the SDI data would help track this. Commissioner Davenport asked where one

**Commission on Health and Safety and Workers' Compensation**  
**MINUTES OF MEETING**  
**July 6, 2006 Elihu M. Harris State Building Oakland, California**

could look for something that cannot be seen in those data. Mr. Neuhauser replied that comparing past data is one way to find changes. Commissioner Davenport then asked how this research helps and how long this will go on. He asked whether CHSWC had recently released something to the Legislature.

Chair Wei explained that at the April meeting, CHSWC adopted a study that evaluated permanent disability ratings to date, as well as proposed a methodology by which a permanent disability rating could be updated. She stated that Mr. Neuhauser's presentation provides updated information with more claims and permanent disability ratings, which confirms the trend that ratings are down 43 percent and dollars are down 52 percent. She stated that monthly updates are being done and are confirming the data trend previously observed. Judge Taylor stated that the paper was approved at the February CHSWC meeting, subject to receiving additional public comments. It was delivered to the Legislature on February 23<sup>rd</sup>. Commissioner Davenport asked whether CHSWC was responding to concerns raised about there not being enough data for the CHSWC study. Chair Wei stated that CHSWC is responding to these critiques and is committed to the ongoing evaluation and research of the permanent disability system.

Chair Wei noted that there was a letter from the DWC for CHSWC, and she asked whether anyone from the DWC was present to talk about permanent disability. Destie Overpeck identified herself as from the DWC but stated that she was not present to speak on this issue. Chair Wei stated that CHSWC had asked the DWC to send a representative that could talk to them about the DWC permanent disability study. She said that people might recall that the permanent disability regulations promulgated by the DWC required that after 18 months of data, the DWC would make an evaluation about whether there were enough data to adjust the schedule. She stated that the 18 months lapsed on July 1 of this year. She stated that she did have a letter from the Acting Administrative Director (AD), Carrie Nevans, which each Commissioner received earlier today and she noted that the letter lays out the DWC's methodology for doing an evaluation of the permanent disability rating system. She read the last two sentences of the letter stating that "Although the available information is not ideal, DWC believes the data is sufficient to commence a study of the initial impact of the new permanent disability rating schedule and correlated wage loss. Initial results of the Division's work should be available later this year."

*Questions*

Commissioner Davenport asked whether someone could contrast what the DWC is doing with what CHSWC is doing. Judge Lach Taylor stated that the DWC plans on examining the return-to-work rates of people who have been injured since the 2005 permanent disability schedule took effect. He stated that it is far too soon to do a long-term study, or at least a three-year wage-loss study, so the DWC is looking at a 12-month rate as something that can be measured early on. He stated that CHSWC's recommendation adopted in February was to immediately revise the schedule and then continually update the schedule using the latest available data. A 12-month return-to-work rate would be one part of the data that CHSWC would recommend be incorporated over time. He stated that the DWC's recommendation would appear to be partially

**Commission on Health and Safety and Workers' Compensation**  
**MINUTES OF MEETING**  
**July 6, 2006 Elihu M. Harris State Building Oakland, California**

consistent with CHSWC's recommendations but not as immediate or comprehensive. He stated that perhaps in time it would become more comprehensive.

Commissioner Davenport asked whether the DWC was going to study return to work as a way of determining whether permanent disability is appropriately evaluated. Judge Taylor replied that it is difficult to understand how the 12-month return-to-work rate fits into the overall rating schedule. Commissioner Davenport asked whether the DWC is doing something different than CHSWC or something that is supposed to achieve the same objective. Judge Taylor replied that one piece of the picture is to identify those who go back to work at the at-injury employer within 12-months though there is actually relatively little wage loss over the long-term. He stated that this is one of RAND's findings and that it is useful information to identify what part of the population falls into that group. Judge Taylor then stated that it does not help to look at the long-term wage loss of those who do not return to work at the at-injury employer.

Chair Wei asked if Judge Taylor can tell from the DWC letter if the Division is doing 12-months as January to January and what return-to-work rates are within those 12 months, or is it a longitudinal tracking by individuals for 12 months. Judge Taylor replied that he believes this means that it is a longitudinal tracking from 12 months after the date of injury and the question is whether people are back to work and working differently from what they were five years ago. Such information is available going back several years. This will be an ongoing process because one of the goals of Senate Bill (SB) 899 was to improve return-to-work rates, which would be beneficial to employers and employees, and this would be one way to measure that.

Chair Wei asked if the DWC's approach is the right path, based on Judge Taylor's experience, to get at what the wage loss is if someone is to return to work. Judge Taylor replied that he can not tell how complete this is and that it is probably part of the whole picture. Chair Wei stated that prior to Commissioner Davenport's comment, Judge Taylor stated that the RAND study at that point in time had indicated what the significance of wage loss to return to work is. Judge Taylor stated that for workers who are back to work at the at-injury employer within 12 months, there is very little long-term wage loss which is not replaced by workers' compensation.

Chair Wei asked if CHSWC is engaged in the DWC study. Ms. Baker replied that the Commission was not, but that CHSWC has a comprehensive study ongoing that has been approved at a previous meeting. There have been delays getting the data from EDD for the ongoing study; however, EDD sent notification this week that they will be providing the data that is needed. RAND will be updating what was done in 2003 to reflect all the newest information. She stated that it will be a three-year study, as it takes three years to get the wage losses of those people who were injured since the impact of SB 899.

Commissioner Davenport asked if the study is duplicating what CHSWC is doing. Chair Wei stated that she thought that this is the Division's response to the permanent disability regulation and that they are going to collect data and adjust the schedule if necessary. It is also the goal of CHSWC's work to evaluate the existing schedule and make recommendations to change it, if necessary. Ms. Baker indicated that she has invited the DWC to partner with CHSWC a number of times. The DWC is providing CHSWC with access to DEU data. In addition, CHSWC has

**Commission on Health and Safety and Workers' Compensation**  
**MINUTES OF MEETING**  
**July 6, 2006 Elihu M. Harris State Building Oakland, California**

invited the DWC to meetings with EDD to be able to work jointly on the EDD data. Chair Wei asked if DWC had attended any meetings, and Ms. Baker replied that DWC attended one meeting.

Mr. Neuhauser suggested that if the DWC has a plan for evaluating this issue, it would be useful if it were circulated to people like himself and Robert Reville, and then it would be clear what kinds of questions it potentially answers and in what time frame and where that might overlap the CHSWC study. Judge Taylor stated that he believes the DWC has talked to Mr. Reville about the limitations and what can be done. The fact that it is not possible to do a three-year wage loss study a year and a half after the new schedule rolled out may be why the DWC has focused on what is immediately achievable with a 12-month return-to-work study.

Commissioner Davenport asked if the study might not show the same results. Mr. Neuhauser replied that there are actually two questions that CHSWC is trying to answer. One question is whether or not the different types of injuries are being compensated with equity. It was clear how to correct the old permanent disability schedule with the RAND data. Judge Taylor's approach suggests a way to correct the American Medical Association (AMA) schedule for wage loss, so that there is equity between injuries. The second question is whether or not the schedule adequately compensates workers even if it is equitably compensating workers across injuries. Mr. Neuhauser stated that he thinks that whatever the DWC is proposing, it has to address both of those sets of questions, but that he has not seen the DWC study and does not know if it does either or both.

Commissioner Salazar asked if the DWC letter will be made part of the public record, and Ms. Baker replied that it would. Chair Wei also stated that the letter would be made part of the public record. She stated that she is concerned the same data sets are being ordered from EDD and that there are two distinct projects lacking coordination. She stated that she would like to explore with the staff and Commissioners ways to meet with the DWC more formally to determine if there is a way to work together. Commissioner Davenport stated that he does not object to that but he does not necessarily think that it is a bad idea for two different parties to study the same thing from a different perspective. Ms. Baker stated that she believes that CHSWC efforts are benefiting the DWC by putting together the data sets and the requirements and that EDD has also expressed concern about whether these are two separate projects that may be the same and yet involve two separate prices. She stated that she thinks CHSWC can work that out. Chair Wei stated that resources should be shared and there should not be duplicate efforts.

**Commission on Health and Safety and Workers' Compensation**  
**MINUTES OF MEETING**  
**July 6, 2006 Elihu M. Harris State Building Oakland, California**

**WOSHTEP Proposals**

**Christine Baker CHSWC Executive Officer**

**Linda Delp, Director, Labor Occupational Safety and Health Program (LOSH),  
University of California, Los Angeles**

**Robin Baker, Director, Labor Occupational Health Program (LOHP),  
University of California, Berkeley**

Christine Baker stated that the Worker Occupational Safety and Health Training and Education Program (WOSHTEP), a safety program, is an excellent example of a training program that is funded by insurers and is a proactive program that works with workers throughout the state to improve safety and prevent injuries. She stated that Linda Delp from UCLA LOSH and Robin Baker UC Berkeley LOHP will share what has been done the past year and what is planned for the coming year.

*Accomplishments to Date*

Ms. Delp stated that WOSHTEP is a partnership between CHSWC, LOSH and LOHP. The goals of WOSHTEP are to reduce injuries and illnesses among California workers and to promote health and safety on the job. Ms. Delp stated that two of the WOSHTEP components are a labor-management Advisory Board and a WOSH Specialist training class. The training is a 24-hour course designed to develop leadership among workers to participate in health and safety programs at their workplace. This is being offered by a statewide network of trainers. Training is offered in three languages, English, Spanish and Chinese. Another component of WOSHTEP is a Small Business Resources program, which has been dedicated to the restaurant industry and which will be expanding another industry. Additional components are Young Worker Health and Safety Programs and the Northern and Southern California Resource Centers at LOHP and LOSH.

Ms. Delp stated that WOSHTEP targets outreach and training using several types of criteria including: high hazard industries; industries and occupations where there is a high rate of injuries and illnesses; underserved populations which may be people with limited English language skills; young workers; and lastly, joint labor-management programs. The range of industries includes: janitorial/maintenance, small manufacturers, construction, restaurants, health care, corrections and rehabilitation, telecommunications, food service, laundry, agriculture, transportation, schools, refineries, warehousing, garment, recycling, and meat packing.

Ms. Delp stated that close to 600 WOSH Specialists have been trained in the 24-hour course. There are two different models of training. One is an industry-specific or occupation-specific model. Examples of this model are the Department of Corrections and Rehabilitation (CDCR), janitorial contractors, small manufacturers, and some specific occupations within the health care industry. The other model is an open enrollment course, when LOHP and LOSH also partner with various organizations to offer open enrollment courses for insurance carriers, community colleges, and community and labor organizations. Ms. Delp then stated that one key component of the 24-hour WOSH Specialist program is development of action plans at the end of the course. The goal is for the trained health and safety specialists to go back and serve as resources in their

**Commission on Health and Safety and Workers' Compensation**  
**MINUTES OF MEETING**  
**July 6, 2006 Elihu M. Harris State Building Oakland, California**

workplaces and organizations, so that they can reach a broader workforce than those trained through the course. WOSH Specialist accomplishments include: strengthening health and safety committees; assisting in developing Injury & Illness Prevention Plans (IIPPs); and acting as a health and safety resource to co-workers.

Ms. Delp stated that CDCR has been a very successful model of participation in the WOSH Specialist training. Staff from CDCR participated in training-of-trainer programs, and the WOSH Specialist course is being rolled out throughout the state at all CDCR facilities. CDCR management has stated that *"Through WOSHTEP, labor and management can effectively work together to improve health and safety on the job and reduce workers' compensation costs."* Ms. Delp stated that since CDCR is planning these trainings throughout the state, there is potential for structural change within an entire organization.

Ms. Delp next commented that another key component of WOSHTEP is to provide small businesses with health and safety resources. The goal is to train owners and managers so that they can train workers to be involved in workplace health and safety programs at the level of small business, with particular emphasis on the restaurant industry. Partnerships have been developed with the State Compensation Insurance Fund (SCIF) and the California Restaurant Association (CRA). The Restaurant Safety Training Project includes materials available in English and Spanish, and training is being conducted throughout the state, by LOHP in the north and by LOSH the south

Ms. Delp noted that a third successful WOSHTEP component, The Young Worker Health and Safety Program, is reaching young workers either as they enter or before they enter the workforce. The goals of this program are broad education and awareness about health and safety and rights and responsibilities, leadership development in the workplace, and health and safety service-oriented projects in their own community. There are special events focusing on young worker health and safety each May during Safe Jobs for Youth Month, which include a teen health and safety poster contest and an exhibit of the Lewis Hine's child labor photographs and photographs of child labor in other countries.

Ms. Delp stated that two successful Young Worker Leadership Academies (YWLAs) were offered this year, one in Sacramento and one in Los Angeles. The goal of the Academies is to develop leadership among those youth who participate so that they go back and educate other youth. Teams participated throughout the state, with more people wanting to participate than there was room for. The teams involved both students and mentors from schools, youth organizations, and community-based organizations (CBOs). Some CBOs that participated are the California Conservation Corp, environmental justice groups, and youth employment training programs. Ms. Delp stated that follow-up with participants of the leadership academy has been done, and those youth have already developed several projects, including public service announcements that have been on the radio, a health-and-safety DVD and a website.

Ms. Delp concluded by stating that WOSHTEP also maintains Northern and Southern California Resource Centers which provide print and online resources, including an online Multilingual



**Commission on Health and Safety and Workers' Compensation**  
**MINUTES OF MEETING**  
**July 6, 2006 Elihu M. Harris State Building Oakland, California**

Health and Safety Guide. The Resource Centers also provide technical and research assistance and referrals to state and local health-and-safety agencies.

Robin Baker then spoke about the 2006-2007 initiatives and directions of WOSHTEP. Ms. Baker referred to the WOSHTEP proposals before the Commissioners as continuing the successful programs that Ms. Delp described. She then stated that one area of expansion of the program is small business health and safety resources. The restaurant project has been very successful and well received. She stated that it is clear that people want industry-specific programs. The next industry will be strategically selected based on Labor Code guidelines and will be either a high hazard industry or an industry with underserved populations. In addition, another strong partnership, as with the California Restaurant Association (CRA) and SCIF for the restaurant safety training project, would be developed. Ms. Baker stated that discussions are currently underway with the WOSHTEP labor-management Advisory Board about possible industry choices. Suggestions from other members of the workers' compensation community are welcome. Ms. Baker also noted that it would be important to have generic health and safety resource materials that any small business could use, such as injury-and-illness prevention programs and worker-training resources.

Ms. Baker next stated that a second key project area for the coming year focuses on carve-outs. A needs assessment has been completed about how to capitalize on the opportunity of alternative dispute-resolution programs to develop a more efficiency in the workers' compensation system and the return-to-work system and to improve safety prevention. She stated that they had been interviewing existing carve-out programs in the state to find out what they are doing in terms of safety prevention and what help they need to go further. In the coming year, there will be pilot testing of an adapted WOSH Specialist course with one of the alternative dispute-resolution programs, most likely the roofers and roofing contractors. In addition, there will be a conference or workshop on health and safety prevention in the workplace both for current programs and carve-outs and for groups that are looking to enter the carve-out system.

Ms. Baker stated that the third project area in the coming year is geographic expansion. Since there is a huge and at-risk population in the Central Valley, which is an important economic area for the state, a concerted effort will be made to find strong partners and to help serve this part of the state by providing the WOSH Specialist course and training-of-trainers course to permanent trainers based in the Valley in conjunction with Fresno State. In addition, Ms. Baker stated that employers have been asking for education about heat stress now that there is a new heat-stress standard in the state.

Finally, in addition to the geographic expansion to the Central Valley, LOSH has been expanding existing programs to San Diego as well as eastern counties of Southern California, and LOHP is expanding beyond the immediate Bay Area to Sacramento, San Jose, and Redding.

Commissioner Wilson asked if there have been any incentives for employers to participate in this program, such as insurance company discounts. Christine Baker replied that CHSWC has been meeting with Cal/OSHA Consultation Services to identify ways to get some type of incentive. She said that a Labor Code change of some sort would probably be needed if, for example, high

**Commission on Health and Safety and Workers' Compensation**  
**MINUTES OF MEETING**  
**July 6, 2006 Elihu M. Harris State Building Oakland, California**

hazard industries were to be given some relief for taking a WOSH Specialist course. The WOSHTEP Advisory Board has also been exploring this issue. Commissioner Wilson then asked if there is anecdotal evidence of people who have gone through the training experiencing accident rates that have actually dropped and whether this is being monitored. Christine Baker replied that it is very difficult to monitor this, but that the program is trying to set up a tracking system for this purpose. Commissioner Davenport asked how the recent WOSHTEP budget compares with what was done in past years. Christine Baker replied that the budget is the same, and that the budget cannot be augmented without a budget change proposal.

Chair Wei stated training in wage and hour law could be helpful to young workers. She stated that they could be trained in agricultural piece-rate rules, minimum wage, and how to look at a paycheck and understand it so that they could be sure they are paid accurately. She acknowledged that this goes beyond health and safety, but asked for comment. Ms. Baker said that there is an overlap as youth are protected by two sets of laws, the OSHA laws and the child Labor laws, and there is emphasis on labor laws to the extent that they have a health and safety impact.

Commissioner Wilson then asked about the funding for WOSHTEP. Christine Baker explained that it is an independent, non-general fund based on an assessment on the indemnity costs of the system as a percent. It is assessed to the insurers, and the same amount is appropriated each year, unless there is a new appropriation. Commissioner Wilson asked if all employers are eligible, or only those part of the funding mechanism. Christine Baker replied that the funding mechanism is primarily assessed against the insured employers. There have been several independent requests for analysis to see whether self-insureds can participate in the program even though they do not contribute to it. She stated that Larry Swezey has done an analysis on whether these funds could be used for other purposes. That analysis determined that it is not prohibitive to offer the program to those who do not fund it; however, the priority is not to divert funds away from those who are paying into the fund. Since small businesses are a significant portion of the state's employers, there is a special emphasis on providing this program to them.

Commissioner Wilson asked if the program gets funds from anywhere else besides the insurance companies, such as grants. Christine Baker replied that it does not. Commissioner Wilson asked how the CDCR gets funding. Christine Baker replied that they are part of SCIF though they are self-insured. Since SCIF is a major contributor to the fund, it was important to be responsive to the request from the CDCR. She stated that the CDCR wanted to be trained, they had union and management representation, and they wanted a Specialist training program, so it was important to provide access to this program. Commissioner Wilson stated that WOSHTEP is a great program but some focus should be on whether funding from additional sources could be found so that others could benefit. Robin Baker stated that they have to be careful to make sure that those who are funding the program are happy with the services that are being provided.

**Commission on Health and Safety and Workers' Compensation**  
**MINUTES OF MEETING**  
**July 6, 2006 Elihu M. Harris State Building Oakland, California**

*CHSWC Vote*

Commissioner Wilson moved to approve the WOSHTEP proposals and Young Worker Partnership proposal, and Commissioners Davenport and Schwenkmeyer seconded. The motion passed unanimously.

**Report on the California Disaster Preparedness Forum**  
**Christine Baker, CHSWC Executive Officer**

Christine Baker stated that a report of the proceedings from the California Disaster Preparedness Forum was submitted to the Commissioners for approval. She stated that it was a successful forum with information that she recommends be shared with the public. The forum took place on April 7, 2006, with the sponsorship and partnership of many organizations and with many of the speakers donating their time. Selected agenda items included: Impact of a 1906 Earthquake Today; Profile of Risk to California Workers from a Variety of Catastrophe Scenarios; Is California Prepared if a Disaster Strikes at Work; Employer and Worker Preparedness for Natural Disasters and Terrorist Attack; Workers Protecting the Workplace: The Safety and Health of Emergency Responders; Roles of Federal, State and Local Agencies in Disaster Preparedness and Response; and Recommendations for the Future.

Forum sponsors and participants included: The Labor and Workforce Development Agency; Department of Industrial Relations (DIR); Division of Occupational Safety and Health Cal/OSHA; RAND; Service Employees International Union (SEIU); California Labor Federation; Governor's Office of Emergency Services; Department of Health Services; California Department of Insurance; Risk Management Solutions; SwissRE; US Geological Survey (USGS); National Institute for Occupational Safety and Health (NIOSH); Center for Occupational and Environmental Health at the University of California Berkeley; and the California Workers' Compensation Institute. As a result of all the partnerships, the forum was cost-neutral.

Ms. Baker stated that four main themes were presented during the forum: (1) disaster preparedness is an occupational safety and health issue; (2) occupational safety and health is about labor and employer cooperation and communication, as well as public and private partnerships; (3) preparedness includes first responder safety, and the definition of first responder has been broadened to include employees themselves; and (4) the insurance system is a critical part of preparedness, as compensation is necessary for rebuilding to support the families of the deceased and seriously injured.

Ms. Baker stated that forum speakers discussed hurdles to preparedness as well as ways to overcome those hurdles. Speakers described preparedness as being only as strong as the weakest link. It was emphasized that security guards at office buildings are often the first responders but that they often do not have adequate training and compensation. She also stated that small business advocates advise that small businesses need simple solutions and specific recommendations to make emergency preparation feasible; otherwise, preparation becomes a low priority that is forgotten when it is not a "hot issue." She stated that awareness, education,

**Commission on Health and Safety and Workers' Compensation**  
**MINUTES OF MEETING**  
**July 6, 2006 Elihu M. Harris State Building Oakland, California**

self-assessment and professional consultation are the recommended best preparation steps, but that preparedness is still a voluntary activity that may not end up on a priority list.

Ms. Baker then summarized some of the simple tips that came out of the forum, such as: collect emergency contact information for all employees, including employee personal cell phones and emails; recognize that business-continuity plans need to take into consideration employees who live in close proximity, since infrastructure damage may prevent more senior-level personnel who live farther from work to be available; create a messaging system so that employees can get detailed information about alternative worksites and reporting instructions, as well as for families to call in to learn about the whereabouts or safety of an employee; hold evacuation drills and educate and train all employees about workplace safety, incorporate "duck and cover" exercises, safety systems and precautions; store a 72-hour Self-Preparedness Kit in a car or at work desk, including sturdy shoes, food, water and medications; create scenarios of 10 to 30 percent decreases in the workforce which detail how work will continue to get done as part of the planning process; and create a staff-succession plan, as no one can lead or manage during a catastrophe for days on end.

Ms. Baker noted that speakers described how shared responsibility, shared accountability and shared leadership are ways Californians can work together to plan and prepare. Speakers also emphasized how first responders need to be trained to assess hazards, infrastructure damages and how to share resources, as well as how to respond when communications channels break down. Federal and state standards need to be aligned. In addition, protective gear needs to be evaluated in terms of protection and feasibility.

Ms. Baker stated some recommendations from the forum: preparedness requires cooperation, communication and collaboration; public-private partnerships as well as labor-management partnerships, should be pursued in developing disaster-preparedness plans and in implementing mitigation-and-response activities; private sector and government agencies may want to take a closer look at how to best to be prepared at the local level; the private sector and government need to assess if there are appropriate incentives in place to encourage and offset the costs of mitigating and responding to disasters; ongoing communication between government agencies, employers, employees, and safety personnel about disaster preparedness, mitigation and response is necessary; and that in addition to police, firefighters and emergency-management personnel, many other parties will need to be considered as emergency responders, including employees, employers, security guards, healthcare workers and public works workers. Ms. Baker also stated that speakers emphasized that small businesses need to address planning and training. Small business advocates indicate that until now, disaster preparedness has not been a priority for small businesses due to a lack of resources.

Ms. Baker stated that the presentations and the paper on the forum will be posted on the CHSWC website. Commissioner Wilson commented that the report did not mention that there was a great turnout with a lot of different people and organizations represented, and that fact should be included in the report. Ms. Baker stated that over 200 people, representing both labor and management, attended. Commissioner Salazar congratulated CHSWC staff for planning and holding the forum and mentioned that everything discussed is particularly relevant currently

**Commission on Health and Safety and Workers' Compensation**  
**MINUTES OF MEETING**  
**July 6, 2006 Elihu M. Harris State Building Oakland, California**

given concerns about pandemic influenza. He stated that he thought the report should be shared widely with employers and small businesses.

*CHSWC Vote*

Commissioner Davenport moved to approve that a draft of the report on the forum be circulated for comment, and Commissioner Thacker seconded. The motion passed unanimously.

**Executive Officer Report**  
**Christine Baker, CHSWC Executive Officer**

Christine Baker reported on the activities of CHSWC. She stated that during this period, CHSWC staff has been working on the annual report and that she hopes to have a draft available for the Commission later this summer. She stated that a number of projects that have been voted on will take time to go through the request for proposal and contracting process. Two of the most important projects include a major study on return to work and another study on evaluation of the medical components of the reforms. Both of those studies will be conducted by RAND. Ms. Baker stated that the preliminary meeting on the medical study had taken place the last week of June and that the DWC will be coordinating with CHSWC and RAND on that study.

Ms. Baker explained that the RAND return-to-work study will require data from EDD and that there had some delays in getting the Memorandum of Understanding (MOU) through EDD but tentative approval has been given. Ms. Baker stated that the evaluation of the reforms will be a comprehensive study of the impact of the changes and the first component will be a study of medical necessity, medical networks and the use of \$10,000 before a compensability determination. She also stated that the study will review the impact of the changes to the fee schedules and will develop an issue paper on the potential of using "pay for performance" for workers' compensation.

Ms. Baker stated that CHSWC staff is active on all of the projects trying to facilitate data acquisition and MOUs for that purpose. She said that each study requires data approvals and acquisition as well as planning meetings. All of the new studies are in this phase.

Ms. Baker stated that the project with the California Healthcare Foundation, UC Berkeley and CHSWC is moving forward. This project is looking at the feasibility of a 24-hour integrated care pilot in a carve-out scenario. Discussions with employers have gone forward with some delay. Preliminary discussions with the Service Employees International Union (SEIU) 1877 are underway, and further discussions are set for this month.

Ms. Baker then stated that since the April 2006 CHSWC meeting, work with the Fraud Assessment Commission on their Request for Proposal for the underpayment and overpayment study of the workers' compensation medical system has proceeded. Evaluations of the proposals will take place next week over a two-day period.

**Commission on Health and Safety and Workers' Compensation**  
**MINUTES OF MEETING**  
**July 6, 2006 Elihu M. Harris State Building Oakland, California**

In addition, Ms. Baker added that CHSWC staff has been serving as technical assistance to legislative staff on issues studied at their representative's request; these issues include health care organizations (HCOs), return to work, and the proof of coverage. Ms. Baker then stated that ongoing activities for WOSHTEP include developing a strategic plan, holding the bi-annual advisory board meeting, and drafting the proposals that were submitted for CHSWC vote.

**Public Questions and Comments**

Chair Wei announced to the audience that public comment would be allowed and asked that everyone who wanted to speak should please sign up at the side table. She also reminded the audience that everyone is limited to three minutes of comment.

Steve Zeltzer from the Coalition for Workers' Memorial stated that public comment should follow each of the topics of discussion so that Commissioners would be aware of public comment before voting. He then stated that the cut in benefits to workers since the workers' compensation reforms noted in the study should be related to the increased profits at insurance companies. He stated that there has been a cost-shifting to SSI and other systems since the workers' compensation system is not providing compensation. He stated that penalties for non-compliance should be investigated. Mr. Zeltzer also stated that the ACOEM guidelines should be made public; they are currently under private control. Injured workers should not have to pay a private company to look up the guidelines for treatment. Mr. Zeltzer also stated that the cutbacks at Cal/OSHA, especially the elimination of a position for a physician, should be included in a study. Mr. Zeltzer also stated that carve-outs are a problem and that stiffer penalties on employers should be used. He then stated that the privatization of healthcare and the closures of hospitals and emergency rooms in California will be critical factors in the lack of healthcare available during a disaster.

Dina Padilla, president for the California Chapter of Voices and with the Coalition of Injured Workers, stated that she has been an injured worker advocate since 1992. She stated that she agreed with everything Steve Zeltzer said. She stated that cost shifting means that people do not get the care they need. She stated that many people do not even know about Medi-Cal or State SDI and that people have even been transferred to federal programs. She also commented that if Compromise and Release (C&R) status is awarded, SDI has to be repaid out of it. She stated that CHSWC should survey long-term injured workers to determine how they are today. She also stated that after two years on workers' compensation, one moves to Medi-Care, but she stated that workers' compensation issues are not covered by Medi-Care.

Marie Shaheda Mussoware stated that she has a case at the Workers' Compensation Appeals Board (WCAB). She stated that CHSWC studies are about prevention, but the studies do not describe how the changes to the workers' compensation system have affected injured workers. She stated that the medical care she received was very difficult to obtain, and she had to engage an attorney. She also stated that she was pressured to find work when she could not work and that she cannot get the medical care she needs. She stated that insurance companies were committing fraud and asked CHSWC to do studies about fraud. She stated that she has been

**Commission on Health and Safety and Workers' Compensation**  
**MINUTES OF MEETING**  
**July 6, 2006 Elihu M. Harris State Building Oakland, California**

trying to get a court hearing for her case about fraud. Commissioner Wilson stated that the Fraud Assessment Commission has jurisdiction over these matters. She reported that she visited the DWC website and a new link to the DWC medical unit which will address medical-provider fraud, but that there was no information about how the complaint will be processed or whether it will be acknowledged.

Catherine Porter, Staff Attorney with WORKSAFE, asked CHSWC whether they had looked at a single-payor universal health-care system as a more comprehensive approach for getting good medical care for workers and non-workers, as opposed to looking at how to tweak change existing systems. She also stated that the CHSWC's focus on health and safety should begin to include wage and hour laws, as issues of payment cause stress on the job and are related to health and safety. She stated that it would be worth considering offering training on wage and hour laws.

Chair Wei stated that CHSWC's study on 24-hour integrated medical care pilot program is not universal health care, but that it does try to integrate both medical care systems, group health and worker's compensation. Ms. Baker added that the pilot will assess whether it is possible to integrate the systems. Ms. Porter replied that if there were a universal health-care system, SDI cross-subsidization would no longer be an issue.

Dina Padilla spoke on behalf of Cathon Phaedrus Adams. She stated that she wanted to reiterate what Marie Mussoware said that everyone refers people to the DWC and the Department of Insurance. She stated that there are many kinds of shifting, including justice shifting, compensation shifting, and accountability shifting. Dina read a statement by Cathon Adams, a University of California Davis worker from 1987-1995. She quoted Cathon as stating that she was injured several times with multiple injuries, and she was fired by UC Davis in 1995 while on workers' compensation. Ms. Padilla stated that this was common. She continued quoting Cathon stating that Cathon is still trying to recover her workers' compensation benefits. She stated that UC Davis, Octagon Risk Management, their defense attorneys, their doctors, and the DWC have denied medical care. Ms. Adams stated that the First Report of Injury ICD-9 codes would indicate clearly whether the injury was industrial or not. Ms. Padilla stated the Cathon and others had made complaints to the Department of Insurance, the district attorneys offices, and the Fraud Assessment Commission in Sacramento with proof of fraud and corruption but to no avail. She identified the National Institute Crime Bureau, a non-profit organization created by the insurance industry and funded by employers. She stated that the Department of Insurance explained that they do not go after fraud by insurance carriers and that medical evaluation tapes are erased and used again. She stated that that is insurance code and penal violations. She also stated that medical evaluations are material evidence; without the tape, you do not know what went on during the evaluation.

Ms. Padilla then stated that she wanted to announce the death of injured worker Peter DiPortillo. She said that he was an injured worker who was severely beaten for being a whistle blower on embezzlement at a car dealership he worked for. He was beaten on the doorsteps by his employer. Peter had been denied his medical care benefits by SCIF for several years. SCIF has

**Commission on Health and Safety and Workers' Compensation**  
**MINUTES OF MEETING**  
**July 6, 2006 Elihu M. Harris State Building Oakland, California**

also continually denied benefits to his wife. Ms. Padilla spoke about his service to other injured workers and the respect he had from the community. She asked for justice for injured workers.

Chair Wei stated that she acknowledges and appreciates that injured workers come and participate with testimony. She stated it is a good reminder of the issues behind the research that CHSWC conducts. She stated that it can be frustrating for the Commissioners to hear about the plight of injured workers and not have a lot of tools of to help with the issues, just as it can be frustrating for members of the public to come and have the Commissioners listen, but not necessarily have a next step that can be taken. She explained that CHSWC is a joint labor-management commission that is charged to do research and evaluation of the workers' compensation system. It cannot advocate for individuals and it cannot advocate for specific policy changes. The work of CHSWC and its dedicated staff is to provide research, understanding and analysis behind that kind of policy change that may be pursued by other organizations. Chair Wei stated that she encouraged and supported the public to continue to come to CHSWC meetings.

Nancy Keiler stated she was not injured but works with injured workers. She wanted to know what the point of having public comment is if not one positive action can come out of it. She asked where injured workers can go to present their cases and get some attention. Chair Wei explained again that CHSWC cannot assist in individual cases but can assist individuals find resources to help with their individual cases. Chair Wei stated that the public can inform CHSWC about proposals for study.

Ellen Stevenson, an injured worker, stated that she wanted to support what the other injured workers were saying. She stated that the problem is not a few injured workers but many. She stated that if you asked any injured worker how they have been treated or if you do an audit, you would find that the poor treatment of injured workers is rampant since SB 899 was passed. She stated that insurance companies will do anything for a profit and that the penalties are not substantial enough to deter them. She claimed that she spoke on behalf of injured workers about the pain and the injustice they experience.

*Adjournment*

The meeting was adjourned at 1:00 p.m. The next CHSWC meeting is scheduled for Thursday, October 5, 2006 in Oakland.

Approved:

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Angie Wei, Chair

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Date

Respectfully submitted:

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Christine Baker, Executive Officer

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Date